

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**U.S. SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

-against-

**SILVERGATE CAPITAL CORPORATION,
ALAN J. LANE, KATHLEEN FRAHER, and
ANTONIO MARTINO,**

Defendants.

24 Civ. 4987 (ALC)

FINAL JUDGMENT AS TO DEFENDANT SILVERGATE CAPITAL CORPORATION

The Securities and Exchange Commission having filed a Complaint and Defendant Silvergate Capital Corporation having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Sections 17(a)(2) and (a)(3) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §§ 77q(a)(2) and (a)(3)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (b) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, concerning financial condition or regulatory, operational, or legal risks of any investment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 13(a) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] by, directly or indirectly:

- (a) filing or causing to be filed with the Commission any current, quarterly, or other report which contains any untrue statement of material fact, which omits to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or which omits to disclose any information required to be disclosed; or
- (b) failing to file any annual or quarterly report required to be filed by any issuer having securities registered pursuant Section 12 of the Exchange Act. [15 U.S.C. § 78l].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and (b)(2)(B)] by, directly or indirectly:

- (a) failing to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; or
- (b) failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (1) transactions are executed in accordance with management's general or specific authorization; (2) transactions are recorded

as necessary (i) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements and (ii) to maintain accountability for assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to the differences.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$50,000,000 to the Securities and Exchange Commission pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)]. The amount of the civil penalty shall be offset by any payments made by Defendant and/or its wholly-owned subsidiary, Silvergate Bank, to the Federal Reserve Board of Governors ("FRB") and/or the California Department of Financial Protection and Innovation ("DFPI") to satisfy their penalties within 30 days of the date of entry of this Final Judgment. Within 10 days of any payments made by Defendant and/or Silvergate Bank to the FRB and/or DFPI to satisfy penalties, Defendant shall transmit photocopies of evidence of payment and case-identifying information in a form acceptable to Commission staff.

If the civil penalty amount is not offset in full by Defendant's and/or Silvergate Bank's payments to the FRB and/or DFPI, the Defendant shall remit to the Commission the outstanding amount of the civil penalty that is not offset. The Defendant must remit to the Commission a cash payment for any outstanding balance of the civil penalty that is not offset within 30 days of the entry of this Final Judgment. Upon good cause shown, the Commission staff may, in its discretion, grant one or more extensions, up to a total of 90 days, of the period within which payment must be made to satisfy the Defendant's obligations under this Final Judgment. The Commission retains its right to pursue any outstanding amount of the civil penalty that is not offset and may enforce the Court's Final Judgment for penalties by use of all collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. §3001 *et seq.*, and moving for civil contempt for violation of any Court orders issued in this action.

If the Defendant pays any portion of the penalty to the Commission in accordance with the prior paragraph, the Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court. The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund, and the Fund may only be disbursed pursuant to an Order of the Court.

The Commission forgoes any right to collect post-judgment interest on this award.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the

government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: _____, _____

UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**U.S. SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

-against-

**SILVERGATE CAPITAL CORPORATION,
ALAN J. LANE, KATHLEEN FRAHER,
ANTONIO MARTINO,**

Defendants.

24 Civ. 4987 (ALC)

CONSENT OF DEFENDANT SILVERGATE CAPITAL CORPORATION

1. Defendant Silvergate Capital Corporation (“Defendant”) waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the “Final Judgment”) and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77q(a)(2) and (a)(3)] as set forth in the Final Judgment;
- (b) permanently restrains and enjoins Defendant from violations of Section 13(a) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder

[17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] as set forth in the Final Judgment;

- (c) permanently restrains and enjoins Defendant from violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and (b)(2)(B)] as set forth in the Final Judgment; and
- (d) orders Defendant to pay a civil penalty in the amount of \$50,000,000 under Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)]. The amount of the civil penalty shall be offset by any payments made by Defendant and/or its wholly-owned subsidiary, Silvergate Bank, to the Federal Reserve Board of Governors (“FRB”) and/or the California Department of Financial Protection and Innovation (“DFPI”) to satisfy their penalties within 30 days of the date of entry of Final Judgment.

3. Defendant agrees that, within 10 days of any payments made by Defendant and/or Silvergate Bank to the FRB and/or DFPI to satisfy their penalties, Defendant shall transmit photocopies of evidence of payment and case-identifying information in a form acceptable to Commission staff.

4. Defendant agrees that, if the civil penalty amount is not offset in full by Defendant’s and/or Silvergate Bank’s payments to the FRB and/or DFPI, Defendant shall remit to the Commission a cash payment for the outstanding balance of the civil penalty within 30 days of the entry of this Final Judgment. Defendant acknowledges that, upon good cause shown, the Commission staff may, in its discretion, grant one or more extensions, up to a total of 90 days, of the period within which payment must be made to satisfy Defendant’s obligations under this

Final Judgment.

5. Defendant acknowledges that the Commission retains its right to pursue any outstanding amount of the civil penalty that is not offset and may enforce the Court's Final Judgment for penalties by use of all collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. §3001 *et seq.*, and moving for civil contempt for violation of any Court orders issued in this action.

6. Defendant acknowledges that, if it pays any penalty to the Commission in accordance with the prior paragraph, the Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

7. Defendant acknowledges that the civil penalty paid pursuant to the Final Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant agrees that it shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil

penalty imposed in this action. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

8. Defendant acknowledges that the Commission forgoes any right to collect post-judgment interest on this award.

9. Defendant agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

10. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

11. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

12. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

13. Defendant agrees that this Consent shall be incorporated into the Final Judgment

with the same force and effect as if fully set forth therein.

14. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

15. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

16. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this

action, Defendant understands that it shall not be permitted to contest the factual allegations of the complaint in this action.

17. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission’s policy “not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings,” and “a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that it neither admits nor denies the allegations.” As part of Defendant’s agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; and (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. Nothing in this paragraph affects Defendant’s: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

18. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney’s fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have

reached a good faith settlement.

19. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

20. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 6/26/2024

Silvergate Capital Corporation

By: 

Andrew Surry
Chief Accounting Officer

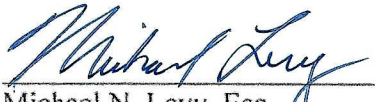
On June 26, 2024, Andrew Surry, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.




Notary Public

Commission expires: 2/25/25

Approved as to form:


Michael N. Levy, Esq.
Ellerman Enzinna Levy PLLC
Attorney for Defendant

SILVERGATE CAPITAL CORP.
CERTIFICATE OF CORPORATE RESOLUTION


I, Judith Knowles, do hereby certify that I am the Corporate Secretary of Silvergate Capital Corporation ("SCC" or "Corporation"), a Maryland corporation, and that the following is a complete and accurate copy of a resolution adopted by the Board of Directors of SCC at a meeting held on June 26, 2024, at which a quorum was present:

RESOLVED: That Andrew Surry, an Officer of this Corporation, be and hereby is authorized to act on behalf of the Corporation to sign a Consent (attached hereto) memorializing the terms of the offer of settlement from SCC to the United States Securities and Exchange Commission ("Commission") in connection with the investigation conducted by the Commission.

I further certify that the aforesaid resolution has not been amended or revoked in any respect and remains in full force and effect as of the date hereof.

IN WITNESS WHEREOF, I have executed this Certificate this 26TH day of June __, 2024.

By:



Judith Knowles
Corporate Secretary
Silvergate Capital Corp.